

[Cite as *Raeder v. Metzger*, 2010-Ohio-2093.]

COURT OF APPEALS
GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

NANCY RAEDER

Plaintiff-Appellee

-vs-

ROBERT L. METZGER,
SALLY A. METZGER, AND
MICHAEL M. METZGER

Defendant-Appellant

JUDGES:

Hon. Julie A. Edwards, P.J.
Hon. William B. Hoffman, J.
Hon. Sheila G. Farmer, J.

Case No. 09 CA 22

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Guernsey County Common
Pleas Court, Case No. 07-CV-578

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

May 12, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

CLIFFORD N. SICKLER
508 North St.
Caldwell, Ohio 43724

MICHAEL M. METZGER, PRO SE
232A Clark Street
Cambridge, Ohio 43725

Hoffman, J.

{¶1} Defendant-appellant Michael M. Metzger appeals the June 4, 2009 Judgment Entry of the Guernsey County Court of Common Pleas finding in favor of Plaintiff-appellee Nancy Raeder.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellee Nancy Raeder owned property at 58526 Lashley Road, Senacaville in Guernsey County, and leased the residence to Robert and Louise Metzger in 1999. Subsequently, Louise Metzger suffered a massive stroke. Following the stroke, Sally A. Metzger moved in with her parents to care for them.

{¶3} Louise Metzger passed away on May 29, 2000, and Sally Metzger remained in the home to care for her father.

{¶4} In June of 2000, the parties renewed the lease of the residence. Robert Metzger and Sally's son Michael Metzger signed the lease. Sally Metzger did not sign the lease due to lack of income. The lease terms established rent due at \$625.00 per month. While the Metzgers paid their rent timely for a while, they eventually stopped making payments altogether.

{¶5} In September of 2000, Appellee decided to sell the Lashley property, and had a real estate agent look at the residence. The real estate agent, Janice Kafury, noticed a stench emanating from the residence and poor living conditions. Kafury called Appellee to advise her she could not sell the property in its current condition, and she also notified the health department. Raeder then contacted Adult Protective Services as Robert Metzger was ill and living in the home.

{¶16} The Metzgers subsequently moved out of the residence. The property was unsuitable to live in requiring Rader to expend \$6,008.56 in supplies and repairs. Appellee and her husband spent 374 hours in labor, either themselves or through contractors, to return the house to the same condition as before the Metzgers occupied the residence. The Metzgers have not paid the rent due and owing, nor have they reimbursed Appellee for the repairs.

{¶17} Appellee filed the within action in the Guernsey County Court of Common Pleas seeking to recover the rent due and owing and the cost of repairs. On June 4, 2009, via Judgment Entry, the trial court granted judgment in favor of Appellee in the amount of \$17,638.56 - \$4,150.00 in back rent, \$6,008.56 in damages and supplies, and \$7,480.00 in labor.

{¶18} Appellant Michael Metzger now appeals, assigning as error:

{¶19} "I. I PRESENT TO THE COURT FOR REVIEW THAT THE CONCLUSION OF LAW FINDING #1 IS IN ERROR. THIS CAN BE LOCATED ON PG.3 OF THE FINAL APPEALABLE ORDER."

I

{¶10} Though inartfully drafted, Appellant's assignment of error references the trial court's Conclusion of Law No. 1, which reads:

{¶11} "The Court concludes as a matter of law that the lease is a written contract with the applicable statute of limitations being fifteen (15) years. See R.C. 2305.06."

{¶12} Appellant maintains the trial court erred in applying R.C. Section 2305.06 in this matter, and should have instead applied R.C. Section 2305.07.

{¶13} R.C. 2305.06 reads:

{¶14} “Except as provided in sections 126.301 and 1302.98 of the Revised Code, an action upon a specialty or an agreement, contract, or promise in writing shall be brought within fifteen years after the cause thereof accrued.”

{¶15} R.C. 2305.07 reads:

{¶16} “Except as provided in sections 126.301 and 1302.98 of the Revised Code, an action upon a contract not in writing, express or implied, or upon a liability created by statute other than a forfeiture or penalty, shall be brought within six years after the cause thereof accrued.”

{¶17} Appellant asserts the lease agreement introduced by Appellee at trial in this matter was not signed by him or his agent; therefore, R.C. 2305.07 is applicable. Appellant further argues the lease provided to the court lacked Appellee’s signature.

{¶18} Upon review of the trial court’s June 4, 2009 Judgment Entry, the trial court found in the findings of fact:

{¶19} “5. The Court finds a renewal of the lease of the Lashley Road residence was executed in June of 2000. Robert Metzger signed the lease, as did Sally Metzger’s son, Michael Metzger. Sally Metzger refused to sign the lease as she did not have any income.”

{¶20} The trial court then stated in its conclusions of law:

{¶21} “2. The Court concludes as a matter of law that Joseph and Nancy Raeder are the owners of the residence at 58526 Lashley Road, Senacaville, Ohio and that Nancy Raeder is one of the real parties in interest as one of the owners and landlord of the Lashley Road residence as she alone signed the lease. Joseph Raeder would not be [sic] needed for just adjudication of the claims herein.”

{¶22} Appellant has not provided this Court with a transcript of the proceedings before the trial court; therefore, absent a transcript, we must presume regularity in the proceedings before the trial court. *Knapp v. Edwards Laboratory* (1980), 61 Ohio St.2d 197, 400 N.E.2d 384. Based upon the findings of fact and conclusions of law set forth in the trial court's June 4, 2009 Judgment Entry, we do not find the trial court erred as a matter of law in the application of R.C. 2905.06 to the facts at hand.

{¶23} The June 4, 2009 Judgment Entry, of the Guernsey County Court of Common Pleas is affirmed.

By: Hoffman, J.

Edwards, P.J. and

Farmer, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

IN THE COURT OF APPEALS FOR GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

NANCY RAEDER

Plaintiff-Appellee

-vs-

MICHAEL M. METZGER

Defendant-Appellant

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JUDGMENT ENTRY

Case No. 09 CA 22

For the reason stated in our accompanying Opinion, the June 4, 2009 Judgment Entry of the Guernsey County Court of Common Pleas is affirmed. Costs to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ Sheila G. Farmer
HON. SHEILA G. FARMER